

**IN THE  
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X  
**ALEC J. MEGIBOW, M.D., as assignee of  
Jennie Rosario, a/k/a Jenny Rosario,  
08 CV 519 NDNY,**

**Plaintiff,**

**ECF CASE**

**CASE NO. 09 CV 10578  
(AKH)(RLE)**

**v.**

**Fred Hagen, Chief Benefits Officer,  
1199SEIU BENEFIT & PENSION FUNDS,  
as duly authorized designee of the  
Board of Trustees of the 1199SEIU  
Benefit Fund for Health and Human  
Service Employees,**

**Defendant.**

**NY COUNTY CLERK INDEX  
NO. 117320/09**

-----X  
**DECLARATION OF  
ANTHONY M. BENTLEY  
IN SUPPORT OF PLAINTIFF'S MOTION TO REMAND**

**ANTHONY M. BENTLEY declares pursuant to 28 U.S.C. § 1746 as follows:**

**1. I am plaintiff's counsel herein, a member of the bar of this Court, am fully familiar with the facts and proceedings in this case and I submit this declaration in support of plaintiff's motion to remand this cause, and for necessary attorneys fees.**

**2. Defendant's Assistant General Counsel was the drafter ("1") of the Agreement annexed to the Complaint herein.**

3. The final clause on the signature page of the Agreement, ¶ 17 (“2”), indeed the only clause on the signature page of the Agreement, was intended by me, (and I understood it to be the intention of all parties to the Agreement), to be an **exclusive choice of forum./choice of law clause**, delimited, as to forum, to the courts of the State of New York, and, as to choice of law, delimited to the statutory and common law of the State of New York.

Dated:  
New York NY  
January 18, 2010

Respectfully submitted,

/s/Anthony M. Bentley  
Anthony M. Bentley #AB1853  
A. M. Bentley, P.C.  
Plaintiff's Counsel  
116 West 72nd Street  
New York NY 10023-3315  
212 459-4067 Fax 877-2868



**From:** "Suzanne Metzger" <SMetzger@1199funds.org>  
**Subject:** RE: Jennie Rosario  
**Date:** June 16, 2008 1:06:54 PM EDT  
**To:** "anthony bentley" <sbentley@nyc.rr.com>  
**Cc:** "anthony bentley" <judge@counsellor.com>

Mr. Bentley:

I'm sorry you feel that way; I was hoping to do our member a favor. I did, in fact, draft the settlement-- if you were referring to my promotion from Associate Counsel to Asst. General Counsel in your congratulations, thank you-- but the change is actually a modest one, and I hadn't gotten around to changing my automatic signature. I will take the extension you offer, but will have to insist that you either accept or reject the offer by June 23, 2008 so that I can prepare the Fund's answer, if necessary. The settlement is, in fact, conditioned on a release of all claims related to the lawsuit (which includes the other parties and the other lawsuit) and I don't think there's much, if anything, your client is releasing. If you'd like to try to get either your client's former Employer or the Union to contribute something to your client or the settlement, be my guest. Otherwise, please let me know your client's answer by June 23.

Thanks,  
Suzanne

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**From:** anthony bentley [mailto:sbentley@nyc.rr.com]  
**Sent:** Saturday, June 14, 2008 8:07 AM  
**To:** Suzanne Metzger  
**Cc:** anthony bentley  
**Subject:** Re: Jennie Rosario

I write to acknowledge receipt of the proposed settlement document from 1199 which I have reviewed, but not carefully, nor have I spoken to my client, and will not be able to do so until after the weekend. As your time to respond to the complaint is on the cusp of expiry, I would certainly not oppose an extension until July 3, should you wish it, while we discuss the document. The document, as it relates to 1199, in substance, appears to generally reflect the settlement I thought you were proposing. I was surprised, however, to see that it proposes releasing parties unrelated (it has been their position) to 1199 in any way. In the event that those parties wish to contribute to the settlement you propose, I would certainly reconsider the current necessity of deleting those entities from the settlement offer document you transmitted by email attachment dated 6/12/08.

Thanks,

Bentley.

P.S.:

I suspect you did not either draft or review the settlement offer document, as it suggests you have achieved a significant promotion, over a period of eight days, not reflected by your current email. If congratulations are in order, kindly accept mine. Otherwise, please confirm that your title remains as listed in your email first quoted below.

On Jun 12, 2008, at 3:05 PM, Suzanne Metzger wrote:

The attached settlement offer has been approved by the Fund and vetted by co-defendants. Let me know if its acceptable to you. If so, please mail 3 executed copies back to me.  
Thanks

Suzanne Metzger  
Associate Counsel, Legal Department  
1199SEIU Funds  
330 West 42nd Street, 31st Flr  
New York, NY 10036  
p. (646) 473 6041  
f. (646) 473 6049

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**From:** anthony bentley [mailto:sbentley@nyc.rr.com]  
**Sent:** Wednesday, June 04, 2008 11:44 AM  
**To:** Suzanne Metzger  
**Cc:** anthony bentley  
**Subject:** Re: Jennie Rosario

The settlement you propose is exactly what we were seeking, and have so advised the Court, from the inception. It is therefor certainly acceptable.

Of no further relevance, if the settlement is accomplished, are the facts that:

1. the 10/10/07 election notice was not received from 1199 by Rosario, as she was hospitalised out of state.
2. the 2/13/Cobra notice was, in fact, received, as can be demonstrated by postal receipts of delivery;
3. I sent the 2/13/COBRA app to the address (I think) printed on the form.

Thank you.

Bentley

On Jun 4, 2008, at 10:55 AM, Suzanne Metzger wrote:

Hello Mr. Bentley:

I am attorney to the 1199 Funds. I have been made aware that you initiated a lawsuit against the 1199SEIU National Benefit Fund, but no such complaint has been served. As you aware, the Fund sent your client an election notice on October 10, 2007 (our system for mailing and tracking election notices has held up to scrutiny before, of course). In addition, Owen Rumelt, counsel to the Union, sent me a copy of a COBRA application form from your client dated February 13, 2008; I checked with the COBRA department and they have not received any such application from her. Where did you send it to? In any event, I believe it is likely we can settle this matter: if your client properly submits her application now, along with her retrospective payments, I believe we may be able to restore her COBRA benefits retroactively. Let me know if that would settle the matter on your end, and I will seek approval for it.

Thanks

Suzanne Metzger  
Associate Counsel, Legal Department  
1199SEIU Benefit and Pension Funds  
330 West 42nd Street, 31st Flr  
New York, NY 10036  
p. (646) 473 6041  
f. (646) 473 6049

"Please note that the email address for the person you are corresponding with has changed. The new address is listed above. Please use this new address in all future correspondence. Thank you"

Health care information is personal and sensitive information. If such information is being emailed to you, it is after appropriate authorization from the patient or under circumstances that do not require patient authorization. You, the recipient, are obligated to maintain it in a safe, secure and confidential manner. Re-disclosure without additional patient consent or as permitted by law is prohibited. Unauthorized re-disclosure or failure to maintain confidentiality could subject you to penalties described in federal and state law. If you have received this message in error, please notify us immediately and destroy the related message.

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Settlement Agreement & Release  
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17. This Settlement is made and entered into in the State of New York and shall in all respects be interpreted, enforced, and governed under the laws of said state without giving effect to conflicting laws or provisions thereof.

Dated: New York, New York  
August \_\_, 2008

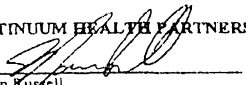
ACCEPTED AND AGREED:

STATE OF NEW YORK )


ss.:)

COUNTY OF NEW YORK)

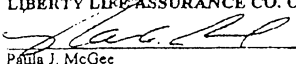
CONTINUUM HEALTH PARTNERS

  
Marvin Russell  
Senior Vice President, Human Resources  
Continuum Health Partners  
555 West 57<sup>th</sup> Street  
New York, New York 10019

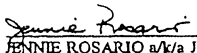
ST. LUKE'S-ROOSEVELT HOSPITAL  
CENTER

  
Marvin Russell  
Senior Vice President, Human Resources  
St. Luke's-Roosevelt Hospital Center  
555 West 57<sup>th</sup> Street  
New York, New York 10019

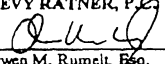
LIBERTY LIFE ASSURANCE CO. OF BOSTON

  
Paula J. McGee  
Litigation Manager  
Liberty Life Assurance Co. of Boston  
3901 Premier North Drive  
Tampa, FL 33618

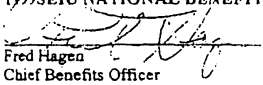
JENNIE ROSARIO a/k/a JENNY  
ROSARIO

  
JENNIE ROSARIO a/k/a JENNY ROSARIO  
300 E. 33<sup>rd</sup> Street  
Apt. 2C  
New York, NY 10023  
(212) 459-4067

LEVY RATNER, P.C.

  
Owen M. Rumelt, Esq.  
Attorney for Defendant  
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80 Eighth Avenue, 8<sup>th</sup> Floor  
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(212) 627-8100

1199SEIU NATIONAL BENEFIT FUND

  
Fred Hagen  
Chief Benefits Officer  
1199SEIU BENEFIT & PENSION FUNDS  
330 West 42<sup>nd</sup> Street, 31st Flr.  
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(646) 473-6950

RUMELT CONTRACT  
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